

# FINANCE ACT 2014

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 66: Business Premises Renovation Allowances*

#### Summary

1. This section provides for amendments to business premises renovation allowances (BPRA) in order to clarify the expenditure that qualifies for relief. It also reduces the balancing adjustment period from seven to five years.

#### Details of the Section

2. Subsection 1 provides for changes to be made to Section 360B of the Capital Allowances Act 2001 (CAA). The changes are specified in subsections 2 to 5.
3. Subsection 2 substitutes a new subsection 360B(1). This substitution provides that qualifying expenditure incurred after the commencement date and before 1 April 2017 for corporation tax purposes and 6 April 2017 for income tax purposes must satisfy conditions A and B and not be excluded by current subsection 360B(3) and new subsections 360(3A) or (3C).
4. Subsection 3 inserts new subsections 360B(2A) to (2C). These require that qualifying expenditure must satisfy Conditions A and B.
5. New subsection 360B(2A) defines expenditure for the purposes of Condition A and is modelled on the existing section 360B(1) CAA with the deletion of “in connection with”.
6. New Subsection 360B(2B) defines expenditure for the purposes of Condition B as:
  - a. Building works, which applies to the cost of labour and materials.
  - b. Architectural and design services, which includes the detailed design of the building and its future layout.
  - c. Surveying or engineering services, which includes services to check the structure of the building or specialists checking for asbestos.
  - d. Planning applications, which cover the costs of obtaining essential planning permissions to alter, for example, a listed building, including legal fees.
  - e. Statutory fees and statutory permissions to include the costs of building regulation fees; obtaining listed building consent; closing roads in order that certain works can be carried out or the costs of obtaining necessary statutory permissions from utilities.
7. New subsection 360B(2C) provides that certain expenditure that meets Condition A but does not fall within Condition B, and is not specifically excluded, may still be qualifying expenditure but is limited to 5 per cent of the expenditure incurred on items (a) to (c) of new subsection (2B). This encompasses expenditure incurred on activities in respect

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of the conversion or renovation of the qualifying building but not specifically listed in Condition B, such as project management services.

8. Subsection 4 makes various amendments to current subsection 360B(3), which excludes certain expenditure from the scheme.
9. Subsection 5 inserts new subsections 360B(3A) to (3D).
10. New subsection 360B(3A) provides that expenditure is not excluded if it incurred on fixtures that are integral features or are otherwise listed.
11. New subsections 360B(3B) and (3C) provide that expenditure is excluded to the extent that expenditure on the works, services or other matters to which it relates exceeds the normal market value amount.
12. New subsection 360B(3D) provides that expenditure does not qualify for relief before the qualifying building has been unused for a period of 12 months.
13. Subsection 6 amends current section 360B(5), to allow new subsection 360B(3A) to be amended by Treasury Order.
14. Subsection 7 inserts a new section 360BA. New subsections 360BA(1), (2) and (6) provide that where qualifying expenditure has been incurred, the works, services or other matters to which that expenditure relates must be completed within 36 months. If after 36 months those works, services or other matters have not been completed, then the expenditure for those not completed will be treated as never having been incurred. Where those works are eventually provided the expenditure will be treated as being incurred at that time.
15. For example, if a return containing a claim for £100,000 of qualifying expenditure was made and after 36 months only works or services relating to £90,000 has been carried out, then in respect of the remaining £10,000 of expenditure the relevant tax assessments will need to be revised.
16. New subsections 360BA(3), (4) and (5) provide for the making of assessments, or amendments to assessments, that may be necessary to give effect to this requirement and provide that a person who has made a tax return, and later becomes aware that it is incorrect must give notice of the required amendments to HM Revenue & Customs (HMRC) within three months of the day on which the person became aware that the return had become incorrect.
17. Subsection 8 inserts a new section 360L. New section 360L is designed to ensure that BPRA is fully compliant with the rules about cumulation of State aid in the new General Block Exemption Regulation (GBER) (Commission Regulation (EU) No. 651/2014) (the “GBER”).
18. New section 360L(1) provides that no allowances are to be made if a relevant grant or relevant payment is made towards qualifying expenditure, or any other expenditure incurred by any person in respect of the same building and on the same “single investment project”. For example, a business renovating a qualifying property in an assisted area cannot receive both BPRA and any other State aid, such as regional aid funding in respect of the same building. If both forms of funding are available then the business will have to decide which State aid to receive.
19. New subsections 360L(2) to (5) provide that if a relevant grant or payment is made after the making of BPRA, the allowance is to be withdrawn if the relevant grant or payment is made towards the expenditure. If the relevant grant or payment is made toward any other expenditure incurred on the same building and single investment project then the relief is only withdrawn if the relevant grant or payment is made within 3 years of the qualifying expenditure being incurred. Provision is made for all necessary assessments and adjustments to be made for this purpose. In addition, a person who has made a return, who becomes aware that anything in the return has become incorrect because of

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the operation of this section, must give notice to an Officer of Revenue and Customs of the necessary amendment, within 3 months of first becoming aware of it.

20. New section 360L(6) defines various terms. For example “single investment project” takes its meaning from the GBER. This requires that a “single investment project” is not limited to the project of a single company, but includes one carried out by an undertaking or undertakings, for example, a joint venture. So, if, for example, two businesses are involved in the same “single investment project” as a joint venture, for example refurbishing different floors of a disused office block which will be let as one building, and one business receives any form of State aid (other than BPRA) in relation to the project, then neither company can claim BPRA even if one of the companies did not receive any other State aid in respect of that joint venture project. This subsection is subject to subsection (13).
21. New section 360L(7) makes clear that any reference to State aid in the section is not to be read narrowly, so as to apply only to State aid that is required to be notified to, and approved by, the European Commission. So, for example, State aid that is brought within the terms of the GBER, so that it is exempt from prior notification, is still a relevant grant or payment.
22. New subsection 360L(8) gives the Treasury a power to amend section 360L should the GBER be replaced by another instrument.
23. Subsection 9 amends section 360M(4). This provides that where qualifying expenditure has been incurred on a qualifying building and a balancing event occurs within seven years, a balancing adjustment must be made. This subsection reduces that period to five years.
24. Subsections 10 and 12 provide that the amendments take effect from a “specified day”. This is defined as being the 1 April 2014 for the purposes of corporation tax and 6 April 2014 for the purposes of income tax. 24. Subsection 11 provides that new section 360L takes effect:
  - a. In relation to a relevant grant or relevant payment made at any time (whether before or on or after the specified day) towards expenditure incurred on or after that day, and
  - b. in relation to a relevant grant or relevant payment made on or after the specified day toward expenditure incurred before that day.
25. This means new section 360L applies where:
  - BPRA qualifying expenditure has been incurred on or after 6 April 2014 and a grant that is a State aid was received before that date.
  - BPRA qualifying expenditure has been incurred on or before 5 April 2014, and a grant that is a State aid is received on or after 6 April 2014.
  - BPRA qualifying expenditure has been incurred on or after 6 April 2014, and a grant that is a State aid is received on or after 5 April 2014.
26. Subsection 13 provides that in relation to expenditure incurred prior to Royal Assent, the definition of “General Block Exemption Regulation” in new section 360L(6) should be treated as referring to Commission Regulation ([EC](#)) No. 800/2008.

### **Background Note**

27. Capital allowances allow the cost of capital assets to be written off against taxable profits. Not all expenditure qualifies for allowances.
28. BPRA aims to bring long-term vacant business properties in disadvantaged areas back into business use. It does this by providing a 100 per cent capital allowance for the

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capital costs incurred of renovating, converting or repairing certain business properties that have been unused for at least a year in assisted areas of the United Kingdom. A writing down allowance of 25 per cent on the straight line basis is also available, where the 100 per cent initial allowance is not claimed, or not claimed in full. It therefore offers both an enhanced rate of allowance and a relief for otherwise irrecoverable expenditure.

29. Following an increase in DOTAS (Disclosure of Tax Avoidance Schemes) disclosures involving BPPRA (which appeared to contain features aimed at exploiting the relief in ways that Parliament had not intended), a written ministerial statement by the Exchequer Secretary to the Treasury was published on 18 July 2013 authorising HMRC to conduct a technical review of the BPPRA legislation with a view to making its policy purpose clearer, more certain in its application and at the same time reducing the risk of exploitation. Following the publication of that statement, HMRC published a Technical Note inviting comments on legislative proposals, with a view to introducing new legislation in 2014.
30. Following the responses to the Technical Note, draft legislation was published in December for consultation. Following that consultation the section published in December has been amended to address some of the concerns expressed. This section clarifies the expenditure eligible for relief. It also requires that where expenditure is incurred for works and services to be carried out over a period of time, or in the future, those works and services must be complete within 36 months to prevent some, or all, the relief given in respect of the expenditure being withdrawn.
31. The section also includes a provision designed to ensure that BPPRA remains fully compliant with the GBER rules about the cumulation of State aid, and ensures that businesses can only claim BPPRA or another State aid but not both.
32. The legislation presently prevents a balancing adjustment being made if certain balancing events take place more than seven years after the time when the qualifying building was first used or suitable for letting. This period will be reduced to five years.